

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

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Office of Legislative Counsel

OLC 78-1989/f |

Mr. James A. Fellenbaum  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

80 MAY 1978

Dear Jim:

I am forwarding a copy of the 23 May 1978 U.S. Court of Appeal affirmation of the District Court's summary judgment denying the plaintiffs (Susan D. Goland and Patricia B. Skidmore) access via FOIA to an executive session hearing transcript, even though CIA had possession of the transcript for 30 years. The District Court held that the hearing transcript was a Congressional document outside the ambit of FOIA. The Court of Appeals agreed with this position. I would like to call your attention to the following paragraph contained in the decision:

"The fact that the CIA retains the transcripts solely for internal reference purposes indicates that the document is in no meaningful sense the property of the CIA; the Agency is not free to dispose of the transcript as it wills, but holds the document, as it were, as a 'trustee' for Congress. Under these circumstances the decision to make the transcript public should be made by the originating body not by the recipient Agency."

The Court went on to say "We hold therefore that the hearing transcript is not an 'Agency record' but a congressional document to which FOIA does not apply."

I recognize that there has been some question in the past whether executive session transcripts in our possession would be subject to FOIA. This decision should put the matter to rest.

Sincerely,

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Acting Legislative Counsel

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Enclosure  
As stated

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